

REMARKS/ARGUMENTS

Status and Amendment of the Claims

Claims 1-44 are pending in this application. Of these, Claims 1-8, 10-21, 33-36, and 41-42 are amended herein for improved technical accuracy and punctuation and Claims 9, 22-32 and 37-40 have been canceled. New Claim 45 is added herein.

Claim Objections

Claims previously misdesignated as 37-40 are objected to on account of their misnumbering. Applicants respectfully submit that the objection is obviated by the foregoing amendment and correction, renumbering these claims as 41-44 pursuant to 37 CFR 1.126. Withdrawal of this objection is respectfully requested.

Claim Rejections Under 35 U.S.C. §102

Claims 1-5, 7-9-11-14, 16, 20, 22, 24-25 and 30-32 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Le Roy (US 5,475,904). Applicants respectfully traverse these rejections in view of the foregoing claim amendments and for the following reasons.

Without commenting on the merits of this rejection and solely in the interest of expediting prosecution, Applicants have amended independent Claim 1 to recite “a fabric comprising *hydroentangled* and consolidated fibers in each of the layers.” As such, Applicants submit that the pending claims possess novelty over Le Roy (US 5,475,904). Withdrawal of this rejection is therefore respectfully requested.

Claim Rejections Under 35 U.S.C. §103

In the Office Action dated May 28, 2008, Claims 6, 10, 17-19, 21, 33-34 and 37-38 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Le Roy (US 5,475,904). In view of the renumbering of Claims 37-40, the rejection with respect to Claims 37-38 is therefore construed in reference to Claims 41-42. Applicants respectfully traverse this rejection in view of the foregoing amendments and for the following reasons.

In a 35 USC 103 inquiry,

the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination....(I)mpermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

See MPEP 2142

Applicants respectfully submit that those of ordinary skill in the art would have no motivation for modifying Le Roy to arrive at the present invention. In the post-KSR landscape, it remains improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983).

The present invention is directed to a nonwoven fabric having at least two separate but interconnected layers, each layer comprising hydroentangled and consolidated fibers, and discrete voids between the two layers. Le Roy, on the other hand, teaches a composite lap formed by the needling/stitching together of two or more fibrous materials along longitudinal join lines so as to leave spaces therebetween. While differences in the concept and mechanism behind the present hydroentanglement method and Le Roy's needlepunching should be readily perceived by the ordinarily skilled, Applicants want to draw particular attention to the distinct fiber arrangements resulting from the respective methods.

In the present invention, fibers are entangled by the force of pressurized fluid against the fabric layers, which results in the type of pattern illustrated in FIG. 2 of the instant specification. As the Examiner can discern, the force of the liquid against the fabric layers is able to entangle fibers in proximity to, even above or below the voids. Le Roy's technique, however, does not have this capability as it employs barbed needles which are restricted to a particular physical path. The needles are advanced through the layers then pulled out again, resulting in longitudinal join lines where the layers are joined. As disclosed in Le Roy, these longitudinal

join lines are formed by the fibers of one lap becoming implanted in the opposite lap. *See* lines 45-64, Col. 3 of Le Roy. The needles cannot entangle fibers in regions lacking adequate clearance. In order for longitudinal spaces to be formed in Le Roy's composite materials, the sites of fiber entanglement (or join lines, in Le Roy's terminology) must necessarily be away from the voids or the needles will risk smashing into the spacers (or longitudinal ribs, in Le Roy's terminology). For a comparison of the fiber patterns in the present invention and Le Roy's composite material, Examiner is urged to inspect FIG. 2 of the instant specification and FIGs. 8-13 of Le Roy, wherein the join lines (or sites of entanglement) are shown in vertically oriented squiggly lines. Based on the foregoing, not only does Le Roy fail to provide any guidance for the present invention, it teaches away from the present invention. Withdrawal of the rejection is therefore respectfully requested.

Claims 15, 35-36 and 39-40 (presently renumbered as Claims 43-44) are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Le Roy in view of Suzuki, *et al.*, (US 4,377,615). Applicants respectfully traverse this rejection in view of the foregoing amendments and for the following reasons.

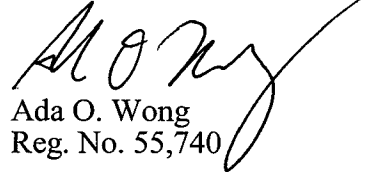
To reiterate, Le Roy neither teaches nor suggests the nonwoven fabric of the present invention, which comprises at least two separate but interconnected layers, each layer having hydroentangled and consolidated fibers, so as to provide discrete voids between the two layers. Suzuki is directed to a multi-layer non-woven fabric having layers with different hydrophobicity or hydrophilicity that is suitable for use in sanitary napkins, disposable diapers, *etc.* As such, Suzuki likewise fails to cure the deficiency in Le Roy. Applicants respectfully submit that the present invention is novel and non-obvious over Le Roy in view of Suzuki. Withdrawal of the rejection is therefore respectfully requested.

Claims 23, and 26-29 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Le Roy as applied to Claim 22, and further in view of Vuillaume (US 5,396,689). Without commenting on the merits of the rejection and solely in the interest of expediting prosecution, Applicants have canceled Claims 23-32, thereby rendering the rejection moot. Applicants however expressly reserve the right to prosecute these at a later time. Withdrawal of the rejection is therefore respectfully requested.

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-442-1000.

Respectfully submitted,



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